

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|-----------------------|---|------------------|
| WASTE ACTION PROJECT, |) | |
| |) | No. C07-0497-BHS |
| Plaintiff, |) | |
| |) | |
| vs. |) | CONSENT DECREE |
| |) | |
| UNIVAR USA, INC., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

WHEREAS, Plaintiff Waste Action Project filed a Complaint in this action against Defendant Univar USA Inc. on April 4, 2007, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Defendant's facility located in Kent, Washington, seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs; and

WHEREAS, Plaintiff filed an Amended Complaint in this action, also relating to discharges of stormwater from Defendant's facility located in Kent, Washington, also seeking declaratory and injunctive relief, civil penalties and

CONSENT DECREE - 1
No. C07-0497-BHS

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

1 attorneys fees and costs; and

2 WHEREAS, Defendant denies Plaintiff's claims and any liability for the
3 alleged violations; and

4 WHEREAS, counsel for the parties to this action have engaged in
5 discussions relating to the potential settlement of this litigation; and

6 WHEREAS, Defendant continues to undertake and implement measures
7 to ensure compliance with the Clean Water Act at its facility, which also
8 address issues raised in the notices of intent to sue served by Plaintiff; and

9 WHEREAS, Plaintiff and Defendant agree that settlement of these
10 matters is in the best interest of the parties and the public, and that entry of
11 this Consent Decree without additional litigation is the most appropriate
12 means of resolving these actions; and

13 WHEREAS, Plaintiff and Defendant, by their authorized counsel and
14 without trial or final adjudication of the issues of fact or law, with respect to
15 Plaintiff's claims or allegations, consent to the entry of this Consent Decree in
16 order to avoid the risks of litigation and to resolve the controversy between
17 them.

18 NOW THEREFORE, without trial of any issue of fact or law, and without
19 admission by the Defendant of the facts or violations alleged in the Complaint
20 or in Plaintiff's notices of intent to sue, and upon consent of the parties, and
21 upon consideration of the mutual promises herein contained, it is hereby

22 ORDERED, ADJUDGED AND DECREED as follows:

23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

CONSENT DECREE - 2
No. C07-0497-BHS

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

1 1. This Court has jurisdiction over the parties and subject matter of
2 this action;

3 2. The undersigned representative for each party certifies that he is
4 fully authorized by the party or parties whom he represents to enter into the
5 terms and conditions of this Consent Decree and to legally bind the party or
6 parties and their successors in interest to it.

7
8 3. This Consent Decree shall apply to, and be binding upon, the
9 parties, and their successors and assigns.

10
11 4. This Consent Decree shall apply to Defendant's operation and/or
12 oversight of its facility located at or about 8201 S. 212th Street, Kent,
13 Washington (the "Facility").

14
15 5. This Consent Decree constitutes a full and complete settlement of
16 the claims alleged in the Complaint or Amended Complaint in this case, or in
17 Plaintiffs' notices of intent to sue, and of all other claims concerning
18 stormwater discharges known and unknown existing as of the date of entry of
19 this Consent Decree, that could be asserted under the Clean Water Act, 33
20 U.S.C. §§ 1251-1387 arising from operations of, or conditions at, the Facility.
21 Plaintiff is unaware of any other claims arising from Defendant's stormwater
22 discharges at the Facility and has no present intention to assert, formally or
23 informally, any claims arising from such discharges.

24
25 6. This Consent Decree shall not constitute evidence in any
26 proceeding. It shall not constitute an admission or adjudication with respect to
27

28
29 CONSENT DECREE - 3
No. C07-0497-BHS

SMITH & LONEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

1 any allegation of the Complaint or Amended Complaint or of any fact or
2 conclusion of law with respect to any matter alleged in or arising out of the
3 Complaint or Amended Complaint. Nor shall it constitute an admission or
4 evidence of any wrongdoing or misconduct on the part of the Defendant or its
5 successors or assigns.
6

7 7. In full and complete satisfaction of the claims covered by the
8 Complaint or Amended Complaint filed in this case and all other claims
9 covered by this Consent Decree, as described in Paragraph 5, Defendant agrees
10 to abide by and be subject to the following terms and conditions:
11

12 a. Defendant shall comply with all conditions of its National
13 Pollutant Discharge Elimination System Permit No. SO3-000707D (the
14 "Permit") so long as the Permit (including any successor, modified, or
15 replacement permit) is in effect. Nothing in this Consent Decree precludes the
16 modification, replacement, or elimination of the Permit.
17

18 b. Defendant shall, directly or through a third-party contractor,
19 sweep the parking lot of the Facility using a high efficiency sweeper, as well as
20 other areas that experience heavy truck traffic, four times each year. Each
21 sweeping shall be completed by the end of the third calendar month after the
22 immediately preceding sweeping.
23

24 c. Defendant shall perform four quarterly rounds of stormwater
25 sampling and analysis (analyzing the stormwater samples for all parameters
26 required under Condition S4 of the Permit, or similar condition under a
27

1 successor Permit) from a catch basin at the Facility that is referred to as "Basin
2 B" in Defendant's Stormwater Pollution Prevention Plan. This sampling shall be
3 in addition to the sampling performed at the catch basin at the Facility that is
4 referred to as "Basin A" in Defendant's Stormwater Pollution Prevention Plan.
5

6 d. Defendant shall cause the paved exterior surfaces at the
7 facility to be patched and sealed by a professional asphalt servicing company
8 by August 31, 2008. The failure of the professional asphalt servicing company
9 to timely perform shall not constitute a breach of this subsection, provided that
10 Defendant uses reasonable efforts to ensure that patching and sealing is
11 completed as soon as reasonably practical under the circumstances.
12

13 e. Defendant shall, for a period of two years from the date that
14 this Consent Decree is entered, forward copies to Plaintiff of all written or
15 electronic reports by Defendant to the Washington Department of Ecology
16 ("Ecology") concerning the actions Defendant has taken in compliance with the
17 Permit at the Facility, including: (i) Discharge Monitoring Reports, (ii) Level
18 One, Two, or Three response reports, or similar adaptive management reports
19 prepared under a successor Permit, and (iii) inspection reports. Defendant shall
20 also forward copies of correspondence it receives from Ecology in response to
21 these reports (or the failure to submit these reports). No later than the fortieth
22 day following the end of each calendar quarter, Defendant shall provide copies
23 of documents encompassed by this subparagraph that have been sent or
24 received in the preceding calendar quarter.
25
26
27
28

1 8. Not later than sixty (60) days after the date of entry of this Decree,
2 Defendant shall make two payments totaling \$17,500 (Seventeen-thousand,
3 five hundred Dollars) for the projects described in Attachments A and B to this
4 Decree. Both payments shall be made by check and shall bear the notation
5 “Waste Action Project v. Univar USA, Inc. Clean Water Act Settlement,” with
6 copies provided to Plaintiff. The two payments shall be made as follows:
7

8 a. Payment of \$12,000 (TWELVE THOUSAND DOLLARS) to
9 King County, Washington for the Mullen Slough restoration project described
10 in Attachment A to this Decree. The payment shall be payable to King County
11 Finance and shall be mailed to King County Water and Land Resources
12 Division, 201 S. Jackson Street, Suite 600, Seattle, WA 98104, Attn: Steve
13 Oien.
14
15

16 b. Payment of \$5,500 (FIVE THOUSAND FIVE HUNDRED
17 DOLLARS) to the Washington Department of Veterans Affairs for the Green
18 River Basin Water Quality Monitoring Project described in Attachment B to this
19 Decree. Such payment shall be payable and mailed to the Washington
20 Department of Veterans Affairs, P.O. Box 41155, Olympia, WA 98504-1155,
21 Attn: Mark Fischer.
22
23

24 9. Within sixty (60) days of the entry of this Consent Decree,
25 Defendant shall pay Plaintiff’s reasonable attorney and expert fees and costs in
26 the amount of \$13,800 (THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS)
27 by check payable and mailed to Smith & Lowney, PLLC, 2317 East John St.,
28

1 Seattle, WA 98112, attn: Richard A. Smith, in full and complete satisfaction of
2 any and all claims Plaintiff may have under the Clean Water Act or other
3 authority for litigation expenses, including attorney fees and costs.

4 10. The Court shall retain jurisdiction over this matter and allow this
5 case to be reopened without filing fee for the purpose of enabling the parties to
6 apply to the Court for any further order that may be necessary to construe,
7 carry out, enforce compliance and/or resolve any dispute regarding the terms
8 or conditions of this Consent Decree until termination of the Consent Decree
9 per paragraph 12. In the event of a dispute regarding implementation of, or
10 compliance with, this Consent Decree, the parties shall first attempt to
11 informally resolve the dispute through meetings between the parties by serving
12 written notice of request for resolution to the parties and their counsel of
13 record. If no resolution is reached within thirty (30) days from the date that the
14 notice of dispute is served, the parties may resolve the dispute by filing motions
15 with this Court.

16 11. The parties agree that no consent judgment should be entered in
17 this action until 45 days after the receipt of a copy of the proposed consent
18 judgment by the United States Attorney General and the Administrator of the
19 United States Environmental Protection Agency pursuant to 33 U.S.C. §
20 1365(c)(3). Therefore, upon the signing of this Consent Decree by the parties,
21 Plaintiff shall serve copies of it upon the Administrator of the United States
22 Environmental Protection Agency and upon the United States Attorney General

1 and shall promptly serve notice, with supporting evidence, that it has done so
2 upon Defendant.

3 12. This Consent Decree shall take effect on the date it is entered by
4 the Court and shall terminate sixty (60) days following completion of all
5 obligations under it.
6

7 13. This Consent Decree embodies the entire agreement and
8 understanding of the parties thereto. There are no other agreement terms that
9 are incorporated into this Consent Decree or that are enforceable thereunder.
10 This Consent Decree may be modified only upon the written consent of the
11 parties and the approval of the Court.
12

13 14. If for any reason the Court should decline to approve this Consent
14 Decree in the form presented, this Consent Decree and the settlement
15 embodied herein shall be voidable by either party at that party's sole discretion.
16 The parties agree to continue negotiations in good faith in an attempt to cure
17 any objection to entry of this Consent Decree that this Court raises.
18
19

20 15. Notifications or copies required by this Consent Decree to be made
21 to Plaintiff shall be delivered by certified mail, return receipt requested, to:
22

23 Waste Action Project
24 P.O. Box 4832
25 Seattle, WA 98104

26 with copy to:

27 Brian A. Knutsen
28 Smith & Lowney, PLLC
29 2317 E. John St.

CONSENT DECREE - 8
No. C07-0497-BHS

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

1 Seattle, WA 98112

2 Notifications required by this Decree to be made to Defendant shall be delivered by
3 certified mail, return receipt requested, to:

4 Univar USA, Inc.
5 8201 S. 212th Street
6 Kent, WA 98032

7 with copy to:

8 Ms. Leslie R. Schenck
9 Garvey, Schubert Barer
10 1191 Second Avenue, 18th Floor
Seattle, WA 98101-2939.

11 Upon written notice to the other party to this Consent Decree, a party
12 may change its designation of the person or persons who are authorized to
13 receive notice under this paragraph.

14 DONE and ORDERED this 29th day of August, 2008.

15
16
17
18 

19 BENJAMIN H. SETTLE
20 United States District Judge
21
22
23
24
25
26

1 WASTE ACTION PROJECT

2 Signature:

Greg Wongard

3 Title:

Executive Director

4 Dated:

June 9th, 2008

5
6
7 UNIVAR USA, INC.

8 Signature:

Pete Herz

9 Title:

Vice President, General Counsel

10 Dated:

5/16/08



King County

Water and Land Resources Division

Department of Natural Resources and Parks

King Street Center

201 South Jackson Street, Suite 600

Seattle, WA 98104-3855

206.296.6519 Fax 206.296.0192

TTY Relay: 711

April 18, 2008

Greg Wingard
Waste Action Project
PO Box 4832
Seattle, WA 98194-0832

RE: Proposed Restoration Activities Related to Waste Action Project v. Univar USA, Inc.

Dear Mr. Wingard:

Per your request, included is a brief description of the restoration project King County Department of Natural Resources and Parks, Water and Land Resources Division (WLRD) would implement with funding provided through a Consent Decree in association with Waste Action Project. The restoration activity would take place on the WLRD-managed property near the mouth of Mullen Slough.

Mullen Slough is a perennial tributary to the Green River that dissects the property on which restoration would take place. This stream provides off-channel habitat for rearing salmonids, as well as flood refugia and over-wintering habitat. Restoring this property was identified as a priority for salmon recovery in the 2005 WRIA 9 Salmon Habitat Plan (Project LG-7). WLRD has been regularly implementing restoration projects on the site to replace invasive vegetation such as blackberries with native trees and shrubs. The goal of these previously-implemented restoration efforts was to improve aquatic and terrestrial habitat for fish and wildlife and to improve water quality.

We understand that \$12,000 will be provided to WLRD via the Consent Decree currently being negotiated in this vicinity. This funding would allow WLRD to continue restoration efforts at the Mullen Slough property. Specific restoration activities would include removing previously placed landscape fabric, planting native trees and shrubs, managing invasive plants such as blackberry, and collecting/disposing of human-generated debris. WLRD would work with local conservation crews to implement these tasks.

WLRD staff would be happy to escort you or others associated with the Consent Decrees to the site for a field visit. We also intend to provide Waste Action Project and the United States Department of Justice with verification that the funds were expended toward the tasks delineated above. WLRD intends to manage and maintain this site in perpetuity.

Greg Wingard
April 18, 2008
Page 2

Thank you for providing us with a draft copy of the Consent Decree; we have reviewed it internally. We look forward to working with you on this project and are confident that you will be pleased with how the funds are expended. Please note that none of the money received will be used for political lobbying purposes.

If you have any questions or would like further information regarding these restoration activities, please do not hesitate to contact me or one of the following WLRD staff: Bill Eckel, Manager, Office of Rural and Resource Programs, at 206-296-8384 or Diane Concannon, Manager, Ecological Services Unit, at 206-296-8017.

Sincerely,



Mark Isaacson
Division Director

cc: Bill Eckel, Manager, Office of Rural and Resource Programs, Water and Land Resources
Division (WLRD), Department of Natural Resources and Parks (DNRP)
Diane Concannon, Manager, Ecological Services Unit, WLRD, DNRP



STATE OF WASHINGTON
DEPARTMENT OF VETERANS AFFAIRS

SERVICE CENTER

1102 Quince Street • P.O. Box 41155 • Olympia, WA 98504-1155 • (360) 725-2184

Project Title: Green River Basin Water Quality Monitoring Project

Project Organization: Veterans Conservation Corps.

Mission Statement: The primary mission of the Veteran Conservation Corps is to assist veterans by providing volunteer opportunities on natural resources restoration projects that help protect and restore Washington's watersheds, including rivers, streams, lakes, marine waters, forests, and open lands.

Contact/Title: Mark Fischer, WDVA

Mailing address: PO Box 41155, Olympia, WA 98504-1155

Phone number: (360) 725-2224

Email address: markf@dva.wa.gov

Project summary:

The problem: The Green River and a number of its tributaries have been determined by the Washington Department of Ecology as failing to meet the state water quality criteria for Dissolved Oxygen and Temperature. In large part this is due to the urbanization of the watershed and loss of riparian habitat, including reduced shading of open water and loss of complexity in the water courses. Various projects have been proposed and are being implemented in an effort to improve dissolved oxygen levels in Green River tributaries. Monitoring metrics for these projects have improved to include more accurate measurement of the benefits and maintenance of the desired functions and values.

Proposed solution: The purchase and use of analytical equipment for water quality monitoring in the Green River basin, for the purpose of determining the efficacy of restoration project elements designed to improve dissolved oxygen (DO) levels and water temperatures.

The specific focus of this monitoring is as part of a program to monitor habitat creation and restoration projects in the Green River basin. The project is being done with the cooperation and assistance of King County Department of Natural Resources and Parks, Water Land Resources Department. The initial use of the equipment would be on two sites.

- The first is a restoration project on ~1/3 mile of stream riparian and associated uplands on Little Soos Creek, part of the Soos Creek drainage, the largest tributary to Green River and a primary source of the salmon in the river system.
- The other site is the Mullen Slough site. Mullen Slough runs between Auburn and Kent, where it enters the Green River just upstream from the facility. King County owns the project site property where the slough enters the river. Restoration of the site is on-going and through a separate funding source VCC will be doing additional plantings at this location to improve the Mullen Slough habitat and water quality.

Project objectives and expected accomplishments:

Use of water quality monitoring in association with restoration projects like the Little Soos Creek project and the Mullen Slough project will better assure that restoration functions and values which are planned are being met and demonstrate the connection between the restoration and water quality, in particular temperature and Dissolved Oxygen critical to salmonids in the Green River system.

In addition this project in conjunction with King County and the Green River Community College will assist veterans returning from Iraq and Afghanistan in earning professional certifications, which improve their ability to get professional family wage jobs in fields in the environmental restoration, stormwater and wastewater sectors. The training is currently limited by a lack of portable analytical equipment which this project will help address.

Timetable: April 2008- April 2010

Veterans Conservation Corps has reviewed the draft consent decree in the matter of Waste Action Project v. Univar USA, Inc., and will review the final consent decree once entered by the Court. VCC has agreed to accept five thousand, five hundred dollars (\$5,500) from Univar as part of the settlement in the above-referenced matter, and will use such funds for its Green River Basin Water Quality Monitoring Project. VCC will not use any money it receives under the consent decree for political lobbying activities. In addition, VCC will submit a letter to the Court, Department of Justice, and the parties, describing how the funds have been spent.

Signature

Mark Fischer
Mark Fischer, WDVA

Title

Program Manager, Veterans Conservation Corps

Dated

3/28/08